

CAPITAN POLICE DEPARTMENT		GENERAL ORDERS
SUBJECT: USE OF FORCE	NUMBER: 2-6	
EFFECTIVE DATE: 5-1-08	REVIEW DATE:	
AMENDS/SUPERSEDES	APPROVED: <u><del>RS</del></u> Chief Randy Spear	

NOTE

This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

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I. POLICY

Officers are confronted daily with situations requiring the use of force to effect an arrest or ensure public safety. The degree of force used depends on what the officer perceives as reasonable and necessary under the circumstances at the time he or she decides to use force. Except for deadly force, the application of any degree of force is justified only when the officer reasonably believes that it is necessary.

- A. To prevent the escape from custody, make an arrest or an investigative detention of a person the officer believes has committed a crime; or
- B. To defend himself or another from what the officer believes is the use of force while trying to arrest another, prevent his escape, or otherwise lawfully take the person into custody.

Facts or circumstances unknown to the officer shall not be considered in later determining whether the force was justified. The department expects officers to observe the following two guidelines in all applications of force:

- A. Employ the minimum force reasonably necessary to accomplish a legal purpose.
- B. Officers may resort to more severe methods of force to overcome either increasing resistance or an increasingly dangerous threat to public safety.

The escalation in the use of force typically follows a pattern: verbal control, compliance techniques (control holds), chemical weapons, defensive tactics (e.g., baton), and finally deadly force. Officers must understand how to recognize increasing or decreasing levels of threat and respond appropriately.

When applying deadly force, officers' objective shall be to stop or incapacitate the suspect, not to kill, unless no other choice presents itself. The objective of the use of any force is to overcome the suspect's resistance to an officer's lawful purpose: officers shall avoid unnecessary or excessive applications of force.

Officers shall not unreasonably or unnecessarily endanger themselves or the public when applying this policy.

## II. PURPOSE

To establish guidelines governing the use of force and its limitations, and to describe prohibited activities.

## III. DEFINITIONS

### A. Deadly force:

1. The firing of a firearm, even though no intent exists to kill or inflict bodily harm.
2. Any force applied in any manner by any means that could reasonably be expected to cause death or great bodily harm.
  - a. "Great bodily harm" means bodily injury which creates a substantial risk of death or which is likely to cause serious permanent disfigurement or loss, or extended impairment of the function of any body member or organ.

B. Non-deadly force:

Force employed which is neither likely to nor intended to cause death or serious physical injury.

C. Firearms:

Any weapon from which a projectile is forcibly ejected by an explosive.

D. Reasonable belief:

When facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

E. Serious physical injury:

A physical injury, which creates a substantial, risk of death, or which causes death or serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

F. Excessive force:

Force is excessive when its application is inappropriate to the circumstances, resulting in serious physical injury or death to a suspect. In determining whether force has been excessively applied, the primary concern is whether the on-scene officer reasonably believes that its application was necessary and appropriate. Based on the reasonableness standard, excessive force may be determined based on:

1. The severity of the crime;
2. The nature and extent of the threat posed by the suspect;
3. The degree to which the suspect resists arrest or detention; and
4. Any attempts by the suspect to evade arrest by flight.

In evaluating the reasonable application of force, officers must consider their own age, size, strength, skill level with department weapons, state of health, and the number of officers opposing the number of suspects.

#### IV. PROCEDURES - Non-deadly force

The department trains officers in the use-of-force continuum, which emphasizes the recognition of, and response to increasing levels of threat. Most instances in which force is applied are non-deadly. Officers shall assess the incident to determine which technique will best bring the situation under control. Following the application of any method of force, once the situation is contained, officers shall provide or arrange to provide medical help. The following discussion reinforces key principles from training.

##### A. Verbal control:

Verbal control refers to the manner in which the officer speaks to a person, which alone can manage a situation. Verbal control includes advice, persuasion, admonitions, or orders. The volume and tone of the officer's speech may also contribute to control without having to resort to another method of force. The department urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.

##### B. Compliance techniques:

At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, take-downs, control holds, or come-alongs with sufficient force to make the lawful arrest without aggravating a suspect's combativeness. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to officers, bystanders, or the person being placed in custody. Where lesser levels of force appear ineffective, officers may employ hands, fists, feet, and knees, and so on in striking an adversary, according to methods sanctioned through training.

C. Chemical agents:

The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser levels are inappropriate or ineffective. The only chemical weapon authorized for patrol personnel is the oleoresin capsicum (OC) or "pepper spray." Chemical agents shall be used only to the extent necessary to overcome the resistance of the suspect within training standards. Specialized weapons (chemical or otherwise) shall be used only by personnel trained in their application, and then only under direct orders of the on-scene supervisor upon consultation with the chief of police.

1. Chemical sprays shall not be used to threaten to elicit information or persuade people to comply with orders, nor will they be used on people who are handcuffed, secured, and properly in custody.
2. Keep the application to the absolute minimum required to effectively control the subject.
3. Do not use on persons who are sick, intoxicated or who are not in possession of their normal protective reflexes (such as being able to turn away from the applied spray). NOTE: Applying a chemical agent to such persons can result in injury out of proportion to the threat they may present.
4. If the on-scene supervisor authorizes the use of specialized weapons, observe the following:
  - a. Chemicals are used primarily in dealing with unruly crowds and armed barricaded subjects.
  - b. Gas grenades are used to disperse unruly crowds and induce the surrender of barricaded subjects when negotiations have failed.
  - c. Tear gas gun is used to fire projectiles into the area of an armed, barricaded suspect when the use of hand-tossed grenades is unsafe or impractical.

D. DEFENSIVE TACTICS:

The department authorizes the carrying and use of the asp as the only striking weapon for officers: all other forms of striking or punching weapons are prohibited for carrying or use, including but not limited to saps, blackjacks, slapjacks, nunchaku and similar sticks, and brass knuckles. Officers who carry the asp shall be certified in its use. The weapon may be used in quelling confrontations involving physical violence where higher levels of force are unnecessary or inappropriate, and lesser levels are inappropriate or ineffective.

1. The asp shall not be used to strike handcuffed individuals or to threaten or intimidate people.
2. The asp is mainly useful, as an instrument to manage various control holds, not as a club or prod. Officers shall not raise the asp above the head to strike a blow.

V. DEADLY FORCE

A. Firearms - general:

1. Firearms may be used:
  - a. In defense of the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or
  - b. To prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant threat to human life should escape occur. No other reasonable means of capture must be available to the officer in this case without endangering the officer's life or the life of another person.
    - (1) In evaluating a "significant threat," the officer must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the officer or others if apprehension is delayed.
    - (2) Where feasible, officers shall identify themselves and give a warning before shooting.

- d. To kill seriously injured or dangerous animals when no other disposition is reasonably practical. A supervisor's approval should be sought when possible.
  - e. In routine firearm training or practice at an approved range.
2. Before using a firearm, officers shall identify themselves and state their intent to shoot, where feasible.

B. Shotgun:

1. Due to its wide shot dispersion, the shotgun shall only be used when a possibility exists that the officer will be dealing with an armed suspect, e.g., armed robbery in progress, searching for armed suspects, answering calls when the complainant has indicated that a person is armed.
2. The chief of police may approve the use of shotguns on raids and stakeouts when he believes that a threat to human life exists.
3. Shotguns shall be encased/mounted and carried in patrol units when not in preparation for use. When the shotgun is not encased/mounted, it shall be carried with the safety on at all times until there is an immediate need to fire the weapon.
4. Shotguns shall be removed from vehicles before leaving them at any garage or service department.
5. Before beginning a tour of duty or immediately thereafter officers shall inspect the shotgun assigned to them.
6. During regular firearms qualification, each officer shall be required to demonstrate proficiency with it.
7. The firearms instructor or armorer shall develop a shotgun maintenance schedule. The officer shall clean the shotgun then the firearms instructor will inspect shotguns according to schedule.
8. The general rules for the use of firearms above apply to shotguns.

## VI. LIMITATIONS ON FORCE

The following acts associated with the use of force are prohibited.

- A. Firing into crowds.
- B. Firing a warning shot.
- C. Firing at or from a moving vehicle, except where the officer reasonably believes that
  - 1. an occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; or
  - 2. a vehicle is operated in a manner deliberately intended to strike an officer or a citizen and all other reasonable means of defense have been exhausted (or are not present), including moving out of the path of the vehicle, and the safety of innocent persons would not be unduly jeopardized by the officer's action.
  - 3. Officers shall not fire at or in the direction of a vehicle that no longer poses an immediate threat.
- D. Firing into a building or through doors when the person fired at is not clearly visible unless officers are being fired upon from such building or through such door.
- E. Firing at a suspect when lesser force could be used and the officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force, or when there is any substantial danger to innocent bystanders. (When in doubt, don't shoot.)
- F. Application of choke hold or carotid control holds, except when the officer reasonably believes such holds are the only means of protecting him or another person from an imminent threat of serious physical injury or death.

- G. Use of Streamlites or Kel-lites or other flashlights as batons. An officer may use a flashlight or other object designed for a use other than as a weapon only to defend himself or another from imminent serious physical injury or death and then only if departmentally sanctioned methods are not available or are impractical. The use of a flashlight under such circumstances shall be deemed an application of deadly force.
- H. Carrying or use of a second back-up firearm.
- I. The carrying or use of saps, blackjacks, slapjacks.
- J. Use of deadly force against unarmed, non-dangerous fleeing felons, fleeing misdemeanants, or traffic offenders.
- K. Any uses of force not reasonably necessary in the light of the circumstances confronting the officer.
- L. Any forcible enforcement action when off duty except in circumstances which seriously threatens life, valuable property, or public order.

## VII. WEAPONS

- A. Duty weapon: While on duty, an officer shall carry an approved weapon, a .357sig, .40mm, 45mm, or a .9mm semiautomatic pistol. The department shall issue ammunition for the weapon.
  - 1. Weapons shall be inspected and approved by the firearms instructor/armorer. In addition, the weapon shall fire department-issued ammunition and the officer shall qualify with the weapon as well as with department-issued shotgun. Officers shall buy ammunition for their personally owned off-duty weapons.
  - 2. The firearms instructor shall maintain a record of all weapons used by officers either on or off duty. The record lists weapon descriptions, ammunition type issued, date of issue, and information pertaining to qualifications. Officers shall annually review the records to ensure that they are up to date.

B. Off-duty weapons: Officers are encouraged, but not required, to carry a handgun when off duty. An officer who elects not to carry a handgun while off duty shall not be subject to disciplinary action if an occasion should arise in which he or she could have taken police action if he were armed.

1. (Exception) Off-duty officers while operating a department vehicle shall be armed with an approved weapon.
2. Officers who carry off-duty weapons must understand that in some social situations (e.g., sports) the carrying of a firearm is inappropriate.
3. Officers who have consumed alcoholic beverages shall not carry an off-duty weapon under any circumstances.
4. All officers shall submit off-duty weapons to the firearms instructor for inspection and firing before carrying them.
5. Off-duty officers who carry firearms while in plain clothes shall not wear them in any way that allows the public to see them.

C. Qualification:

No officer shall carry or use any firearm, chemical agent, or ASP unless he has received training and demonstrated proficiency in its use.

1. Officers who fail to pass the qualification shall be relieved of their police powers and immediately reassigned to non-enforcement duties.
2. Officers who have taken extensive leave or suffered an illness or injury that could affect the use of firearms shall requalify before returning to enforcement duties.
3. Annual firearms qualification will follow required state standards for daylight and night shooting.
4. Quarterly firearms training will be held and a use of force policy review will be completed annually.

## VIII. REPORTING USE OF FORCE

- A. Officers shall document any application of force except for those arising in training or departmental demonstrations.
- B. If officers have employed chemical weapons or any higher degree of force, they shall:
  - 1. Immediately notify the on-duty supervisor, the chief of police or his designee of any use of physical force.
  - 2. Submit a memorandum to the firearms instructor/chief of police or his designee within 24 hours describing the incident and any medical aid rendered, and shall substantiate the force used. The memorandum shall be in addition to any other reports.
- C. Depending on the seriousness of any injury resulting from the application of force, whether to a citizen or officer, the chief of police shall notify the village mayor and, in case of death, the district attorney and the medical examiner.

## IX. DEPARTMENTAL RESPONSE

### A. Assignment:

Pending administrative review, any officer who has taken the life of another person shall be removed from line-duty assignment for a minimum of three days. This action protects both the officer's and the community's interests until the situation is resolved. The officer will complete a psychological review before being returned to line-duty.

### B. Review:

- 1. The chief of police shall review all reported uses of force to determine whether:
  - a. Departmental orders were violated;
  - b. Relevant departmental policy was clearly understandable and effective to cover the

situation; and

- c. Departmental training was adequate.

C. Internal investigations:

Internal investigations of serious applications of force (usually of compliance techniques and more severe methods) shall be of two types conducted simultaneously; first, an administrative investigation to determine whether department standards were followed; second, a criminal one to detect lawbreaking. A criminal investigation shall be discontinued whenever the department is satisfied that no misconduct occurred. RR 1-9 details the two types of investigations.

- 1. Dual internal investigations shall be conducted on all shootings.

D. Psychological services:

Psychological follow-up of post-shooting trauma will normally be directed by the chief of police or his designee whenever deemed appropriate. During an internal investigation, the department shall do all within its power to avoid placement of a stigma on the officer who shoots in performance of duty. Following a shooting resulting in a death, the officer shall not return to duty until a psychological evaluation has been conducted, and the officer has received counseling.